

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4343 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

VALLABHANAGAR KHADUT PRATHMIK GRAHAK SAHAKARI BHANDAR

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 4343 of 1995
None appears for Petitioners
MR SV RAJU for Respondent No. 1
Mr J M Thakore, Adv.General with Ms.Harsha Devani
AGP for Respondent No. 2
MR VIJAY H PATEL for Respondent No. 7
MR MR ANAND for Respondent No. 8

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 30/07/96

ORAL JUDGEMENT

None present for the petitioners. Mr J M Thakore, learned Advocate General with Mrs. Harsha Devani appears on behalf of the state of Gujarat.

2. This Special Civil Application deserves to be rejected solely on the ground that it is not supported by affidavit. Under the Code of Civil Procedures, 1908, every pleading is required to be signed by the party or one of the parties. A suit is tried in accordance with the provisions of the CPC, which includes framing of issues, recording of evidence, production of documents etc. On disputed questions of facts, issues are framed which requires detailed evidence and examination of witnesses. But writ is a summary proceedings. Ordinarily, no evidence is recorded in writ proceeding as they are disposed of on affidavits.

3. This Court, in Special Civil Application No.2437/94 decided on 21.9.1995, in the opening paragraph of the judgment, observed, thus -

"I have come across large number of petitions filed under Article 226 and 227 of the Constitution of India in this Court without affirmation or if affirmed, they are not properly made. This sort of casual approach prevailing has left me puzzled and wondering. It is difficult to conceive, a petition under Articles 226 and 227 of the Constitution of India, without affidavit even for the purpose of just presentation."

The Court further observed as under:

"The jurisdiction of the High Court under Articles 226 and 227 of the Constitution of India, is its original jurisdiction. The decision in a writ petition necessarily rests on the facts stated upon affidavit. Where a petition is not supported by affidavit or where there is no affirmation or affirmation is not properly made, such a petition cannot constitute any foundation for invoking the jurisdiction of the Court."

The blank unsworn affidavit as it appears non page 35 of the present petition is reproduced as follows:

I,,
petitioner herein, do hereby state on solemn
affirmation that the statements made in paras 1
to.....are true to my knowledge, para
.....contains legal submission believed to be
true.

All annexures are true copies.

Solemnly affirmed on thisday of May, 1995
at Ahmedabad.

DEPONENT

Explained to the deponent
in Gujarati by me.

Advocate

Identified by me.

Clerk to the Advocate
Mr B M Mangukiya

It appears that at the time of filing of this petition, the office pointed out that the petition is not supported by affidavit, on which the learned Advocate for the petitioner gave an undertaking on 25.5.1995 saying that the same shall be filed on or before 29.5.1995. This undertaking appears on the "Urgent Note" filed by the Advocate for the petitioner. On this undertaking, the matter was permitted to be circulated by the Registry which is evident from the order at the back of the urgent note. The petitioner obtained ex-parte interim relief by order dated 26.5.1995. Thereafter, the same was continued from time to time upto 28.7.1995. The matter has been adjourned thereafter on a number of dates, but the petitioner has not bothered to file affidavit as per the undertaking given by him before the circulation of the matter and obtained the ad-interim relief.

4. In the aforesaid case, this Court observed with respect to the casual approach being adopted in the court proceedings as under:

"9. It is to be made clear that this sort of practice cannot be permitted to continue. Laxity may be convenient for time being but in long run, it augurs ill for the health of judicial system. This essentially promotes casualness in solemn and serious legal profession. When I say of legal profession, it includes Bar and the Bench. If the profession is to survive, the judicial system has to be vitalised. Thus, for making the system efficient, effective and creditable, the casualness and indifference cannot be accommodated. It is the duty of the Advocate who drafts and/or settle the petitioner the reply or any other pleadings or document to ensure that it is perfect and is in accordance with the rules. The petition should be filed only after the personal check by the Lawyer in charge of the same. Thus, if such practice still continues, in spite of the caution given in this order, the Court may be left with no option but to reject the petition, being not in conformity with the rules. The concession given in this case will not be treated as precedence."

5. The Bombay High Court, in a case reported in a case reported in (1986) (24) Ex.LT 231, has observed that a petition under Article 226 of the Constitution of India should not be filed and conducted in casual manner and it is the duty of the petitioner to ensure that an affidavit filed by him is on record. The High Court of Allahabad, in a case reported in (1965) (2)ITJ. 704 (All.), has held that a writ petition is liable to be dismissed for non-compliance of High Court Rules, as decision in a writ petition is necessarily based on facts stated on affidavit. In Re: Shri Sanjiv Datta & Ors, reported in JT 1995 (3) SC 538, the casual approach in the legal profession has been deprecated by the Apex Court as under:

"Of late, we have been coming across several instances which can only be described as unfortunate both for the legal profession and the administration of justice. It becomes, therefore, our duty to bring it to the notice of the members of the profession that it is in their hands to improve the quality of the service they render both to the litigant public and to the Courts, and to brighten their image in the society. Some members of the profession have been adopting perceptibly casual approach to the practice of the profession as is evident from

their absence when the matters are called out, the filing of incomplete and inaccurate pleadings - many times even illegible and without personal check and verification, the non-payment of Court fees and process fees, the failure to remove office objections, the failure to take steps to serve the parties, et al. They do not realise the seriousness of these acts and omissions. They not only amount to the contempt of the Court but do positive dis-service to the litigants and create embarrassing situation in the Court leading to avoidable unpleasantness and delay in the disposal of matters. This augurs ill for the health of our judicial system.

The legal profession is a solemn and serious occupation. It is a noble calling and all those who belong to it are its honourable members. Although the entry to the profession can be had by acquiring merely the qualification of technical competence, the honour as a professional has to be maintained by its members by their exemplary conduct both in and outside the Court. The legal profession is different from other professions in that what the lawyers do, affects not only an individual but the administration of justice which is the foundation of the civilised society. Both as a leading member of the intelligentsia of the society and as a responsible citizen, the lawyer has to conduct himself as a model for others both in his professional and in his private and public life. The society has a right to expect of him such ideal behaviour. It must not be forgotten that the legal profession has always been held in high esteem and its members have played an enviable role in public life. The regard for the legal and judicial systems in this country is in no small measure due to the tireless role played by the stalwarts in the profession to strengthen them. They took their profession seriously and practised it with dignity, deference and devotion. If the profession is to survive, the judicial system has to be vitalised. No service will be too small in making the system efficient, effective and credible. The casualness and indifference with which some members practise the profession are certainly not calculated to achieve that purpose or to enhance the prestige either of the profession or of the institution they are serving. If people lose confidence in

the profession on account of the deviant ways of some of its members. It is not only the profession which will suffer but also the administration of justice as a whole. The present trend unless checked is likely to lead to a stage when the system will be found wrecked from within before it is wrecked from outside. It is for the members of the profession to introspect and take corrective steps in time and also spare the courts the unpleasant duty. We say no more."

6. Rule 174 of the Gujarat High Court Rules clearly provides that every petition under the rules shall be supported by an affidavit by the petitioner or one of the petitioners or by a person acquainted with the facts of the case. The deponent shall state what paragraphs or portions of his petition he swears or solemnly affirms to from his own knowledge and what paragraphs or portions he swears or solemnly affirms to his own belief, stating the grounds of such belief. In this case, the Registry of the High Court was wrong in circulating the matter on just giving undertaking by the learned Advocate that he will file the affidavit by 29.5.1995. Rule 49 empowers the Registrar of the High Court to dispense with affidavits. Rule 49 reads as under:

"49.(i) All Civil Applications shall be supported by affidavits.

(ii) The Registrar may by general or special order dispense with affidavits in particular cases, or particular classes of cases, except in Special Civil Applications under Articles 226, 227 and 228 of the Constitution."

A reading of Rule 49 clearly shows that the Registrar may exercise power for dispensing with the affidavits except in Special Civil Applications under Articles 226, 227 and 228 of the Constitution. The Registrar or the officer exercising the powers of the Registrar has exceeded the jurisdiction in dispensing with filing of the affidavit and thus has acted in violation of the provisions of Rule 49 of the Gujarat High Court Rules. In fact, the Registry should not accept a petition under Article 226 and 227, if it is not supported by an affidavit. In extraordinary circumstances a party may move a Civil Application for dispensation of affidavit. If such an application is filed, the Court may, in rarest of rare case, if circumstance so warrant, dispense with the

filing of affidavit for the time being. This cannot be made a matter of routine. The practice of filing of affidavit in second set or on carbon copy or separately filed and kept with Farad, cannot be approved. An affidavit has to be a part of the petition, otherwise it will not constitute a writ petition.

7. This petition has been filed by the Primary Cooperative Societies. It does not appear from the entire petition as to through whom the writ petition has been filed. In my endeavour to know, I even looked to the Vakalatnama wherein also name of the person has not been given and it is simply stated "petitioner". Less said the better the casual manner the matter has been conducted by the learned Advocate for the petitioner. It is true that a substantive petition should not be rejected on the technical ground. It is not a case of filing of defective affidavit wherein opportunity may be given for removing the same in a fit case. In the instant case, it was pointed out to the learned Advocate at the time of filing of the petition that it was not accompanied by affidavit and he on giving an undertaking that he will file the same by 29.5.1995, the matter was circulated. More than one year has passed, the petitioner has enjoyed the interim relief, but no affidavit has been filed. In view of this, the question of giving opportunity of filing affidavit also does not arise. On the contrary, it is a case of breach of undertaking. Even when the matter is called out, there was none present to prosecute the petition and to assist the Court, obviously, there is no request for compliance of the undertaking.

8. In view of the aforesaid, in my view, the petition, in absence of affidavit, does not constitute any foundation for invoking writ jurisdiction of the High Court and the same deserves to be rejected as not maintainable and is accordingly rejected with a cost of Rs.2,000/-. Notice discharged. The ad-interim relief is vacated.

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